

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN DIVISION

THE INDEPENDENCE PROJECT, INC., a New :
Jersey Non Profit Corporation, and DENNIS :
MAURER, Individually, :

Plaintiffs, :

vs. :

EVERGREEN I ASSOCIATES, LLC a New Jersey :
Limited Liability Company, :

Defendant. :

Case No. 1:16-06133-JBS-AMD

PLAINTIFFS' REQUEST FOR ENTRY OF JUDGMENT AFTER DEFAULT

COMES NOW the Plaintiffs, The Independence Project, Inc., a New Jersey Non-Profit Corporation, and Dennis Maurer, Individually, by and through their undersigned counsel, and hereby file this Request for Entry of Judgment After Default pursuant to Fed.R.Civ.P. 55(b)(2) against Defendant, Evergreen I Associates, LLC, a New Jersey Limited Liability Company, on the grounds set forth herein"

MOTION AND INCORPORATED MEMORANDUM OF LAW

This is an action for injunctive relief, damages, attorney's fees, litigation expenses and costs, pursuant to the Americans With Disabilities Act, 42 U.S.C. § 12181 *et seq.* ("ADA"), and the New Jersey Law Against Discrimination.

Having failed to retain counsel and file a responsive pleading, a default was entered against Defendant by the Clerk of the Court on January 5, 2017.

For further grounds for entering judgment after default, the Plaintiffs submit the following Memorandum of Law and Supporting Affidavit of their expert, a copy of which is

attached hereto as **Exhibit A**. If required, the Plaintiff's expert would be available to appear at any Evidentiary Hearing required by the Court to provide further support for the relief request herein.

MEMORANDUM OF LAW

This Court has jurisdiction over the action pursuant to 28 U.S.C. § 1331 and 1343 for Plaintiff's claim arising under 28 U.S.C. §12181, *et seq.*, based on Defendant's violations of Title III of the Americans With Disabilities Act and supplemental jurisdiction over the Plaintiff's state law claim brought pursuant to the New Jersey Law Against Discrimination (N.J.S.A.) §10.5 *et seq.* By virtue of 28 U.S.C. § 1367.

Pursuant to the provisions of Rule 55 of the Federal Rules of Civil procedure, when a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by the Rules of Civil procedure, such as the Defendant in this cause, a Default shall be entered against that party. Thereafter, a Default Judgment shall be entered by the Court against the Defendant, based upon evidence provided by a supporting affidavit and/or a hearing if necessary.

On July 26, 1990, Congress enacted the Americans With Disabilities Act, and established January 26, 1992, as the date when all public accommodations had to comply therewith. 42 U.S.C. § 12181; 28 C.F.R. § 36.508(a)(or January 26, 1993) if Defendant has 10 or fewer employees and gross receipts of \$500,000 or less). Under either scenario, the Defendant's deadline for compliance has long since passed.

The premises which are owned, operated, leased, leased by or leased to the Defendant, is a shopping center known as "Evergreen Plaza", which must be accessible by individuals with

disabilities. Pursuant to 42 U.S.C. § 12181(7); 28 C.F.R. § 36.104, the building which is the subject of this action is a place of public accommodation covered by the ADA.

Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991, the Department of Justice, Office of the Attorney General, promulgated federal regulations to implement the requirements of the ADA, 28 C.F.R. Part 36. As set forth in Exhibit A, the Affidavit filed herewith, Defendant, Evergreen I Associates, LLC, is in violation of 42 U.S.C. 12181 *et seq.*, and 28 C.F.R. 36.302 *et seq.*, and is discriminating against the Plaintiff. The discrimination is based on the Defendant denying Plaintiff full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations as prohibited by 42 U.S.C. § 12182(b)(2)(A)(iv), where such removal is readily achievable. The denial to Plaintiff of the full and equal enjoyment of Defendant's public accommodation is also prohibited by the New Jersey Law Against Discrimination. See N.J.S.A. 10.5-4.

Plaintiffs has been obligated to retain the undersigned counsel for the filing and prosecution of this action, and have agreed to pay their counsel reasonable attorney's fees, including costs, litigation expenses and expert's fees and costs incurred in this action. Plaintiff is entitled to recover those attorney's fees, costs and litigation expenses from Defendant pursuant to 42 U.S.C. §13305. Plaintiff, Dennis Maurer is also entitled to damages, but he has elected to waive the recovery of any damages in this case.

Pursuant to 42 U.S.C. 12188(a)(2), this Court is provided authority to grant Plaintiffs injunctive relief, including an Order to alter the subject facilities to make them readily accessible to and useable by individuals with disabilities to the extent required by the ADA, and closing the subject facilities until the requisite modifications are completed.

WHEREFORE, Plaintiff respectfully moves this Court to enter Judgment After Default against the Defendant, Evergreen I Associates, LLC, enjoining it from discriminating against individual with disabilities and closing the subject facilities unless the listed ADA violations are completed within ninety (90) days and awarding Plaintiff his attorney's fees, litigation expenses and costs incurred in this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of **March, 2017**, I electronically filed the foregoing document with the Clerk of this Court using the CM/ECF System and the foregoing document was sent by Certified, U.S. mail, Return Receipt Requested to Evergreen I Associates, LLC, d/b/a Evergreen Plaza, c/o its Registered Agent, Nicholas J. Aynilian, 381 Broadway, Second Floor, Westwood, NJ 07675.

Respectfully Submitted,

/s/ Keith Harris

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